Goodyear Atomic Corporation *and* Oil, Chemical and Atomic Workers International Union and its Affiliated Local No. 3-689. Case 9-CA-14023-2

31 May 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 26 September 1980 Administrative Law Judge John C. Miller issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, a motion to reopen the record for additional evidence, and a motion requesting the Board to take official notice of a Department of Energy decision and order, to which the General Counsel filed a memorandum in opposition.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge as modified herein.

The issue in this case is whether Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide certain requested health and safety information to the Union representing its employees. The Administrative Law Judge found that the information requested by the Union is relevant to its functioning as the collective-bargaining representative of the employee-members and concluded that Respondent's failure to comply with the request established a refusal to bargain in violation of the Act. For the reasons set forth in our recently announced decisions in *Minnesota Mining & Manufacturing Co.*,[2] and *Colgate-Palmolive Co.*,[3] we agree with the Administrative Law Judge's conclusion.

As more fully set out in the Administrative Law Judge's Decision, approximately 1 month before the commencement of negotiations for a new collective-bargaining agreement the Union made a written request to Respondent for the following health and safety related data: (1) the morbidity and mortality statistics on all past and present employees; (2) the generic names of all substances used and produced at the Goodyear Atomic energy plant; (3) the results of clinical and laboratory studies undertaken by Respondent of any employee; (4) certain health information derived from insurance programs covering employees and all information pertaining to illnesses and accidents under workmen's compensation claims; (5) certain OSHA records regarding occupational injuries and illnesses; (6) a listing of contaminants monitored by Respondent, along with a sample protocol; (7) a description of Respondent's hearing conservation program, including noise level surveys; (8) the source and uses of radiation in the plant and a list of incidents which required notification to state and Federal agencies; and (9) a listing of the work areas which exceed NIOSH-proposed heat standards and an outline of the plant's program to prevent heat disease.[4] Despite repeated requests for the information, Respondent failed to provide the Union with any of the data sought.

Respondent raised several defenses against releasing the requested information to the Union, including: (1) the scope of the request is overly broad and, therefore, burdensome; (2) because the request was unrelated to an ongoing grievance or current bargaining issue, it was not actually "refusing to bargain" by declining to provide the information; and (3) the confidentiality of the medical information and the provisions of the Privacy Act[5] preclude it from releasing such data without employee consent. With the exception of the Privacy Act's application to such information requests each of these arguments has been raised and considered in earlier cases,[6] and each has been found insuffi-

[1] Respondent's motion to reopen the record for receipt of additional evidence and its request that the Board take official notice of a Department of Energy (DOE) decision are hereby denied. Respondent asserts that the supplemental material contains evidence relevant to the issue of costs involved in compiling the data requested by the Union. As Respondent's motion states on its face, the DOE document pertains to "some, but not all, of the same information at issue in this proceeding." Because of the tenuous relevance of the document, as well as the Administrative Law Judge's statement that the parties are not foreclosed from bargaining as to cost allocation should information uncovered during the compliance proceedings indicate that Respondent would incur excessive expense in compiling the data, we find no need to reopen the record for receipt of this material.

[2] 261 NLRB 27 (1982).

[3] 261 NLRB 90 (1982).

[4] The complete text of the Union's request is set forth verbatim in the Administrative Law Judge's Decision. With the exception of the request for the OSHA reports, the Union's request in this case is identical in substance to the health and safety aspects of the Union's requests in both *Minnesota Mining & Manufacturing Co., supra*, and *Colgate-Palmolive Co., supra*. In all three cases the requests were drawn by the Oil, Chemical and Atomic Workers International Union.

[5] Privacy Act of 1974, 5 U.S.C. § 552a, Public Law 93-579, 88 Stat. 1896.

[6] See *Minnesota Mining & Manufacturing Co., supra*, and *Colgate-Palmolive Company, supra*.

Member Hunter concurred in each of those decisions, emphasizing the *conditional* nature of the duty to disclose, and the requirement that the Board be vigilant not only in protecting the legitimate right of the employees' bargaining agent to this information but also the equally legitimate concerns of the employer. Here, of course, the employer is charged by statute with protecting the privacy of its employees. In the instant case, however, as in the above-cited cases, there is no substantial evidence that providing only statistical or aggregate medical data would fail to protect the right of privacy of individual employees.

cient to justify the Employer's refusal to provide the Union with a substantive response.[7]

In the instant case, just as in *Colgate-Palmolive*, Respondent offers no substantiation to its claim that the request would be prohibitively expensive in time, labor, and resources to fulfill. Respondent merely points to the breadth of the language of the Union's written request and, later, attempts to rely on the estimates of DOE regarding an entirely different type of information request in support of its position. Further, the genuineness of Respondent's claim is undermined significantly by the absence of any effort by Respondent to seek clarification from the Union in order to narrow the issues included within the request. Instead, Respondent ignored the Union's inquiries and only belatedly attempted to fashion an excuse for its conduct. Accordingly, we reject Respondent's contention that the burden of compliance absolves it of responsibility. We adopt the Administrative Law Judge's recommendation that Respondent must bear all costs of supplying the Union with the information it seeks unless it is clearly shown, during compliance proceedings, that substantial costs are involved. In that event, the parties must bargain in good faith as to the allocation of costs. Absent agreement on the distribution of costs, Respondent must grant the Union access to the records from which the information can be derived,[8] in conformance with such requirements as may be contained in the Privacy Act as set forth below.

In further agreement with the Administrative Law Judge, we find that the information regarding health and safety is both necessary and relevant to the Union's role as collective-bargaining representative of Respondent's employees, irrespective of whether it is related to a particular current grievance or controversy with Respondent. The environment of the workplace and its effect on the health and well-being of employees is fundamentally related to conditions of employment and the presence or absence of a particular controversy is not determinative of its relevance to the collective-bargaining agent.

The third, and major, defense that Respondent raised against releasing the requested information to the Union involved the issue of medical confidentiality and the applicability of the Privacy Act. The assertion that employees' medical records contain personal and privileged information had been dealt with in earlier cases, as noted above. However, herein for the first time an employer asserts that the provisions of another Federal statute prohibit it from complying with the requisites of Section 8(a)(5) of the Labor-Management Relations Act.

The Privacy Act, *inter alia*, restricts the dissemination of information pertaining to individuals which is in the possession of Federal Government agencies and certain of its contractors. Respondent contends that as a Government contractor it is precluded from complying with the Union's request insofar as it seeks data which is derived from employee medical records. While the Administrative Law Judge failed to explicate his reasoning, we agree with his conclusion that the Privacy Act offers Respondent no protection from its obligations under the Act in the circumstances of this case.

In general, the Privacy Act forbids the release of information regarding an individual without that individual's express authorization. However, there are certain exceptions to this general requirement. The Union's request in the instant case is one such exception.

Section 552a(b) of the Privacy Act is entitled "Conditions of Disclosure." It reads, in part, as follows:

> No agency shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be . . . (5) to a recipient who had provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

The Union's initial written request to Respondent for the health and safety data clearly states that any medical information forthcoming from Respondent in reply to its request would be kept confidential. Moreover, nowhere in its request does the Union ask for individual employees' medical records. The request refers to the Union's need for statistics and information, but does not ask for the medical reports themselves or for any other individually identified format. Further, the Union's request specifically states that the sole purpose of the inquiry is in pursuit of its representational responsibilities under the collective-bargaining agreement. This statement of purpose, referring also to the collective well-being of bargaining unit personnel, clearly points to the aggregate nature of the desired material. The Union's subsequent statements on the record regarding the purposes of its request

[7] Here, Respondent does not contend that the information sought contains trade secrets.

[8] *Food Employers Council*, 197 NLRB 651 (1972); *Westinghouse Electric Co.*, 239 NLRB 106 (1978).

further support the view that it sought unidentified medical information, and not employees' unabridged, personal medical records. There is not the slightest suggestion that the Union wanted anything other than statistical data—precisely the type of information referred to in the exception under Section 552a(b)(5) of the Privacy Act, noted above. However, even assuming that Respondent misconstrued the Union's object and believed that it sought to obtain records of individual employees, it never expressed this concern to the Union at any time prior to the hearing in this case—despite the fact that the parties were involved in negotiations for a new collective-bargaining agreement during a substantial portion of that time period.[9] Accordingly, we find no merit to Respondent's assertions that the terms of the Privacy Act protect from disclosures the data sought here by the Union.

In summary, we adopt the Administrative Law Judge's finding that Respondent violated Section 8(a)(5) and (1) of the Act by failing to supply to the Union the health and safety information requested to the extent that such data does not include individual medical records from which identifying data have not been removed.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Goodyear Atomic Corporation, Piketon, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union, and its affiliated Local No. 3-689, as the exclusive bargaining representative by refusing to furnish the latter Union information it requested concerning employee health and safety programs, monitoring and testing systems, devices and equipment, and statistical data related to working conditions, to the extent that such information does not include individual medical records from which identifying data have not been removed.

(b) In any like or related manner refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union and its affiliated Local No. 3-689, or interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Furnish Local 3-689 the information it requested concerning employee health and safety programs, monitoring and testing systems, devices, and equipment, and statistical data related to working conditions to the extent that such information does not include individual medical records from which identifying data have not been removed.

(b) Post at its Piketon, Ohio, plant copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[9] Member Hunter finds it unnecessary to rely on this factor in establishing the violation.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Oil, Chemical and Atomic Workers International Union and its affiliated Local No. 3-689, by refusing to furnish the health and safety information requested by the Union.

WE WILL NOT in any like or related manner refuse to bargain collectively with the aforesaid Union or interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL furnish to Local 3-689 the information it requested concerning employee health and safety programs, monitoring and testing systems, devices and equipment, and statistical data related to working conditions to the extent that such information does not include individual medical records from which identifying data have not been removed.

GOODYEAR ATOMIC CORPORATION

DECISION

STATEMENT OF THE CASE

JOHN C. MILLER, Administrative Law Judge: This case was heard before me in Portsmouth, Ohio, on February 19, 1980, alleging that Respondent has refused to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by refusing to provide requested information to the Union.

Counsel for the General Counsel (hereafter the General Counsel) and counsel for Respondent have filed briefs which have been duly considered. On the entire record in this case, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation, is engaged in the manufacture of enriched uranium at its Piketon, Ohio, facility. During the past 12 months, Respondent shipped goods and materials valued in excess of $50,000 from its Piketon facility directly to points outside the State of Ohio. The complaint alleges, the Respondent admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

It is alleged and admitted and I find that the Oil, Chemical and Atomic Workers International Union and its affiliated Local 3-689, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Union has represented a bargaining unit consisting of approximately 1,500 employees employed at Respondent's Piketon facility for a number of years. A prior collective-bargaining agreement expired May 2, 1979. The current contract was agreed to by the parties and ratified by the membership in December 1979, after a long strike during the summer and fall of 1979.

Negotiations on the current contract commenced in February 1979, and prior thereto, on January 25, 1979, the president of the local Union, D. W. Bloomfield, sent a letter request for information to Respondent's general manager, Nate H. Hurt, which is a part of this record as General Counsel's Exhibit 3. Since the complaint herein relates solely to the requested information, it is important enough to set forth the letter verbatim. The letter states:

> Dear Sir:
>
> This local union requests the company to submit the following information in order that it may properly carry out its representation responsibilities under the collective bargaining agreement:
>
> 1) The morbidity and mortality statistics and basic data from which these were calculated on all past and present employees.
>
> 2) The generic names of all substances used at the Goodyear Atomic energy plant.
>
> BIOLOGICAL
>
> 3) All results of clinical and laboratory studies undertaken of any employee. All results of toxicological and experimental laboratory investigation concerned with toxicological agents that employees may be exposed to. This should include data available to company in these matters whether or not undertaken by a company unit as well as all data relevant to these subjects to which the company is aware. Also all health related information derived from any insurance program covering employees covered under the collective bargaining agreement as well as all information concerning occupational illness and accident data related to workmen's compensation claims.
>
> We also request the OSHA Log of Occupational Injuries and Illnesses (OSHA Form No. 100), the OSHA Supplementary Record (OSHA Form No. 101), and the OSHA Annual Summary of Occupational Injuries and Illnesses (OSHA Form No. 102).
>
> It is agreed that review of this information will be undertaken by licensed physicians with medical confidentiality maintained with respect to any individual employee.
>
> INDUSTRIAL HYGIENE
>
> 4) Which contaminants are monitored by the company. The method of sampling used such as time integrated, spot sample, personal, breathing zone, fixed location. A sample protocol should be provided to the union. How does the company calibrate sampling rates on sampler. What is the analytical method, its sensitivity and the internal method of calibration. Does your laboratory participate in the P.A.T. program under NIOSH? All historical monitoring data (coded). Engineering control program. Type of control, type of hoods and general exhaust information, design base, dilution volumes, volume of work area, capture velocity, exhaust volume and a statement stating effectiveness of control.
>
> Describe your hearing conservation program including periodic audionetric examination, noise level surveys and engineering control measures which are in effect.
>
> Describe the uses of radiation sources in the plant noting source type and activity if isotopes are used. Note machine sources of radiation. Indicate the radiation protection program in effect at the plant. List the incidents which require the notification to state and federal agencies. Describe monitoring.
>
> Indicate work areas which exceed the heat standard proposed in the NIOSH criteria document. Outline the engineering and medical control program in the plant designed to prevent heat disease.
>
> Please be assured that this local union requests the above information for the sole purpose of pursuing its representation responsibilities under the collective bargaining agreement.
>
> This local union will accept photostats of insurance carriers' reports, payroll records, or in any

other written form convenient for the company to supply this information. The order in which the above questions have been asked is not to indicate their priority or to any way describe the format which the company may choose to answer this request. It is merely a recitation of the information which the union believes it is entitled to under well-established NLRB precedents.

This local union would appreciate receiving these statistics and information, or any part thereof which is readily available, as quickly as possible, in order that we may propose steps to be instituted in order to protect the health and lives of the bargaining unit personnel.

Sincerely yours,
D. W. Bloomfield, President
Local 3-689, OCAW

The text of the above letter was drafted by the International Union and Bloomfield conceded that he merely incorporated the text of the International's letter under his name. Bloomfield testified that the Union needed the requested information in order to bargain concerning health and safety matters and to adequately represent its membership. Bloomfield testified credibly that numerous employees had filed grievances on health and safety issues and that employees worked with hazardous materials.

It is undisputed that Respondent did not provide any of the information sought by the Union and in a letter dated February 8, 1979, and signed by D. E. Carver, Respondent's assistant general manager, advised the Union that the "extensive list of demands" was taken under advisement. The letter further stated (G.C. Exh. 4) that at a later date the Union would be informed of the information that would be made available.

At the first contract negotiating session on February 28, 1979, Bloomfield renewed the Union's request for the health and safety information and Respondent again informed the Union their request was under consideration and the Union would be advised at a later date what, if any, of the information requested would be provided. During contract negotiations the week of March 12, 1979, and on April 25, 1979, Bloomfield, on behalf of the Union, renewed its request for the health and safety information. It is not disputed that Respondent never furnished any of the requested information nor did it advise the Union of the reason the information was not being provided prior to this hearing. The Union filed an unfair labor practice charge resulting in the issuance of this complaint on July 31, 1979.

The parties, after an extended strike of some 228 days, reached an agreement on a new collective-bargaining agreement, which agreement included certain modifications to article 14, which was known as the health and safety article. Bloomfield credibly testified that the contract reached and ratified by the union membership was deemed acceptable by the Union despite the failure to get any satisfactory response to its request for health and safety information.

When the hearing opened, Respondent agreed to furnish the Union with certain information relating to its heat and hearing programs and to furnish some documents involving information required by OSHA (Occupational Safety and Health Administration). As the hearing closed, however, Respondent withdrew its earlier offer and refused to furnish the Union any of the information requested.

B. *Issues*

1. Is the information requested relevant and necessary to the Union's role as bargaining representative?

2. Assuming, *arguendo*, that it is, to what extent and degree, if any, must Respondent furnish the information requested?

C. *Contentions of the Parties*

The General Counsel contends that Respondent is obligated to furnish the information requested;[1] that the information is relevant because the health and safety information sought constitutes conditions of employment which are mandatory items in collective bargaining;[2] that employees are exposed to potentially hazardous materials, including radiation sources on a daily basis and that such matters are of grave concern to the Union and the employees, and a legitimate subject for collective bargaining. The General Counsel also notes that this identical issue is pending before the Board in *Colgate-Palmolive Co.*, JD (SF)-61-79 in Case 17-CA-8331, and *Minnesota Mining & Manufacturing Co.*, JD-124-79 in Cases 18-CA-5710, 5711. The Administrative Law Judges in both cases found a violation.

Respondent does not dispute that there was a request for the information and concedes that, in subsequent negotiations, there was no waiver of such demand. Its principal contention is that the Union is utilizing the Board's procedures in a sham bargaining technique and that the request was not made in good faith and that lack of good faith was demonstrated by, *inter alia*: the fact that Union never introduced at the bargaining table the subject matter of its January 25, 1979, letter; the only subject matter introduced at the bargaining table was the issue of pay rate protection should an employee be physically disqualified as the result of a compulsory medical exam; the union president testified that the issue of pay rate protection was the principal health and safety issue and so stated to the union membership in his June 8 newsletter and before the president's panel appointed to resolve the impasse in negotiations. Respondent further noted the inflexibility of the Union's demands and stated its position on the record with respect to each item requested.

D. *Discussion*

1. Preliminary matters

The Privacy Act. Respondent claims in several instances that the Privacy Act precludes their disclosing information, primarily medical, on individuals without their spe-

[1] *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967).

[2] *N.L.R.B.* v. *Gulf Power Co.*, 384 F.2d 822 (5th Cir. 1967); see also *Westinghouse Electric Corp.*, 239 NLRB 106 (1978); *Detroit Edison Co.*, 218 NLRB 1024 (1975).

cific consent. It has been established that the designated bargaining representative is entitled to such information where it is relevant to the union's bargaining responsibilities.[3] The medical history of individual employees is obviously relevant to the Union in its efforts to assess and/or promote occupational health and safety for employees in the bargaining unit. Accordingly, the claim that the Privacy Act precludes furnishing of such information is rejected.

Waiver. Respondent concedes in its brief, and I agree that in the circumstances herein, the Union did not waive its right to the information requested. The Union renewed its request for information on or about February 28, March 12, April 25, 1979, filed refusal-to-bargain charges in June 1979, and, as late as September 11, 1979, again reiterated its request for the information.

Nonetheless, Respondent continues to argue, apparently in support of its contention that the request was not made in good faith, that the Union made no substantive requests for such information in negotiations, that the Union's president did not mention it in a newsletter to employees (Resp. Exh. 1) which summarized the negotiations, nor was it an item in dispute that was submitted to the presidential impasse panel. Lastly, Respondent notes that the Union signed a new contract embracing a modified article 14, the health and safety article in the contract, in December 1979.

The Union is not required to make additional substantive requests particularly here, where Respondent's recalcitrance in furnishing any information made it impossible for the Union to modify its request in accord with the information or form of information available. Whether Respondent is naive, which I doubt, or miscontrues the nature of the request, which is unlikely, is not clear. The information to be gathered is apparently part of a long-range task spearheaded by the International Union to determine what areas of health and safety they may be concerned with in future bargaining. The Union's request for information is not limited (by law or by the nature of its requests here) only to matters that might concern current negotiations. As stated by Bloomfield at one point, the information gained was to be given the International Union which had the expertise and the experts to assess the information and review areas of health and safety that concern the Union. The Union is entitled, as a matter of law, to information which may be utilized for current bargaining or as the basis for future bargaining.

Because the Union's request for information involved more than current negotiations, it logically was a matter that could be set aside for future resolution. Thus, there would have been little purpose or reason for the Union to set forth the matter of the requested information in either the union newsletter or in its position to the presidential panel.

Respondent's failure to respond. The Company's attitude towards this request is best reflected by a statement attributed to company representative J. D. Carver, and undisputed on this record. Bloomfield credibly testified that at a negotiation session on September 11, 1979, he again raised the issue of their requested information. Bloomfield stated:

> Mr. Carver was the person that responded to the question and his first statement was that he did not believe that we really even wanted to know this information. And, after further assuring him, in no uncertain terms, that we most definitely wanted to know this information, he then stated to us that he believed that even if they gave us this information, we would not know what to do with it.

At the hearing, Respondent rested its case without presenting any witnesses and submitting only one exhibit, the union newsletter. Moreover, while counsel for Respondent indicated at one point that certain information would be made available to the Union, by the time the hearing closed, the offer to give such information was withdrawn. Respondent's position, therefore, on various requested items is reflected not by testimonial evidence under oath but is simply the representations of counsel. While I am not impugning the integrity or veracity of Respondent's counsel, his statements of position on the record is not the equivalent of testimonial evidence under the oath of people in a position to known the nature and extent of the requested information and its availability.

Thus, Respondent's failure to fully litigate the issues raised makes it impossible to intelligently assess the merits of Respondent's objections to furnishing certain information, including their contention that certain information is not available, or that the request is so broad or detailed as to be onerous and burdensome.

Thus, if I conclude that the General Counsel has set forth a *prima facie* case, I have no choice but to find the violations alleged. The other alternative, namely, to discuss Respondent's asserted position on various aspects of the request, would appear to be simply an academic exercise, and would necessarily *assume*, without deciding, that the facts were as asserted by Respondent.[4]

Before deciding whether a *prima facie* case exists, I will, for informational purposes, set forth in summarized form the items of information requested and the position of Respondent as set forth in the record.

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[3] *United Aircraft Corp.*, 192 NLRB 382, 390 (1971); nor is confidentiality a defense, see *Ingalls Shipbuilding Corp.*, 143 NLRB 712, 717 (1963).

[4] As indicative of the danger of accepting Respondent's statement of position, as fact, compare Respondent's position here concerning the Union's request for the generic names of all substances used at the plant with certain testimony by a company representative in *Colgate-Palmolive Co.*, JD-(SF)-61-79, pp. 7-8. Here Respondent asserts that the information was never assembled, that the request is burdensome and would involve significant search and reproduction costs. In the *Colgate* case, a company representative stated that, under provisions of the Toxic Substances Act, administered by the Environmental Protection Agency, employers are required to submit a list of chemicals to that agency. At p. 8 of the Administrative Law Judge's decision, there was testimony that it would take 2 to 3 man-days to list the generic names of certain substances and one additional man-day to list the remaining substances. Whether or not the Toxic Substances Act is applicable to Respondent, Respondent's position that such information is not available or that procuring it would be onerous and burdensome appears dubious if not incredible on its face.

2. Requested information

(a) Request: Morbidity and mortality statistics for past and present employees.

Response: Information does not exist and has never been developed. In any event, it involves individual employee records which are not disclosable under the Privacy Act.

(b) Request: The generic names of all substances used at the Goodyear Atomic energy plant.

Response: Information never assembled and request is burdensome and would involve significant search and reproduction costs. Generic names not always available. List of bulk chemicals filed at NIOSH could be made available.

(c) Request: Results of clinical and laboratory studies undertaken of any employees, including results of toxicological and experimental investigations.

Health-related information derived from any insurance programs.

Information concerning occupational illness and accident data relating to workmen's compensation claims, and OSHA records, Forms 100, 101, and 102.

Response: No data exists with regard to toxicological and laboratory investigations, and no investigations made.

Ref: Insurance program information—does not exist.

Ref: Occupational illness and accident data—not disclosable (Privacy Act).

Ref: OSHA records. Cited forms not available, but DOE Form 200 is available.

(d) Request: Contaminants monitored by Company, the method of sampling used, and a copy of a sample protocol. Also requested is historical monitoring data and detailed information on the engineering control program.

Response: Involves records accumulated over 24 years and would involve retrieving, reviewing, and summarizing 30,000 to 60,000 papers and involve at least 500 to 1,000 man-hours.

(e) Request: Description of hearing conservation program.

Response: No objection if needed and wanted.

(f) Request: Description of radiation sources in the plant.

Response: Information requested can be assembled and made available but will require resolution of security questions. Information provided to NIOSH could be made available for Union's inspection.

(g) Request: Information on work areas which exceed the heat standard proposed in NIOSH criteria document. Outline the engineering and medical control programs in the plant to prevent heat disease.

Response: Information on heat standard can be assembled and made available subject to resolution of security questions. Information provided to NIOSH could be made available for the Union's inspection. As to engineering and medical control programs, a description of GAT heat stress prevention program can be provided along with temperature recordings from which the Union can calculate the information they want.

3. Summary and conclusions

On the basis of the entire record, I find that the General Counsel has adduced credible evidence that the Union herein has requested the information set forth in its January 25, 1979, letter, and that the information requested is necessary and relevant to fulfill the Union's collective-bargaining responsibilities.[5] For reasons previously discussed I rejected certain legal objections raised by Respondent, specifically, that the Privacy Act precluded the furnishing of certain information. Further, I reject Respondent's contention that the requested information was, in essence, a sham bargaining technique or that the request was not made in good faith.

As previously discussed, due to Respondent's failure to adduce evidentiary support for its position that the information requested was not available, or was too onerous or burdensome to procure, I am unable to make explicit findings on the requested items or to modify the requests for information in light of its availability.

It is an employer's obligation to provide relevant and material information to the collective-bargaining representative, to make a reasonable effort to secure the requested information, and if unavailable, explain or document the reasons for the asserted unavailability.[6] Other than a *pro forma* acknowledgement of receipt of the request, Respondent made no substantive response for 1 year after the request. Further, it appeared at the hearing, and chose in effect not to litigate by failing to adduce any evidence in support of its asserted position in rejecting all requests for information.

As the record does not establish that the retrieval or reproduction of the requested information would be burdensome to Respondent, Respondent shall bear all costs of search, review, and reproduction of the requested information.[7]

As I have concluded that the information requested by the Union is relevant to its functioning as the collective-bargaining representative of the employees, Respondent's failure to comply with the request is a refusal to bargain and constitutes a violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by refusing to furnish any of the information requested by the Union's letter dated January 25,

[5] *N.L.R.B.* v. *Truitt Mfg. Co.*, 351 U.S. 149 (1956); *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967); *A. S. Abell Co.*, 230 NLRB 1112 (1977).

[6] *M.F.A. Milling Co.*, 170 NLRB 1079, 1097 (1968).

[7] Cf. *Food Employers Council*, 197 NLRB 651 (1972). This would not foreclose the parties about bargaining as to allocation of costs if Respondent can prove to the Union or in compliance proceedings that substantial costs are involved in compiling certain information.

1979, has refused to bargain within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

The recommended Order will require Respondent to cease and desist from refusing to bargain with the Union and to furnish to the Union the information requested. More explicitly, Respondent shall furnish all the information requested to the extent it exists. The requested data includes morbidity and mortality statistics of present and past employees, the generic names of all substances used at the plant, the results of clinical and laboratory studies of employees including toxicological and experimental investigations, insurance program health information, occupational illness and accident data, OSHA records, a list of contaminants and monitoring data and information on the engineering control program, a description of the hearing conservation program, and a description of radiation sources in the plant, information on work areas which exceed the heat standard proposed in NIOSH (National Institute of Occupational Safety and Health) criteria document, and an outline of the engineering and medical control programs to prevent heat disease. Any questions arising as to Respondent's complying with this order can be resolved in compliance proceedings.

If there is a dispute about the allocation of any substantial costs, it shall be resolved in accordance with the decision in *Food Employers Council, supra*, or in compliance proceedings. On the basis of the record here, a broad remedial order is not warranted.

[Recommended Order omitted from publication.]